REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 12, 14-16, 18, and 20-23 are currently pending, Claim 23 having been added. The changes and additions to the claims do not add new matter and are supported by the originally filed specification, for example, on page 6, lines 15-27.

In the outstanding Office Action, Claims 12-14 and 20-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mostafa (U.S. Pub. No. 2002/0073205) in view of Richardson et al. (U.S. Pub No. 2005/0021806, hereafter "Richardson"), Jason, Jr. et al. (U.S. Patent No. 6,728,243, hereafter "Jason"), and Barde et al. (U.S. Pub. No. 2004/0268400, hereafter "Barde"); and Claims 15-16 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mostafa in view of Richardson, Jason, Barde, and Cooper (U.S. Pub. No. 2004/0003399).

Applicants thank the examiner and her supervisor for the courtesy of an interview extended to Applicants' representative, Mr. Sameer Gokhale, on April 29, 2009. During the interview the differences between the claims and the applied art were discussed. Also, proposed clarifying claim amendments were also discussed. Arguments and claims similar to those discussed during the interview are presented for formal consideration.

With respect to the rejection of Claim 12 under 35 U.S.C. §103(a), Applicants respectfully traverse this ground of rejection. Claim 12 recites, *inter alia*,

> before a streaming service is initialized, an MMS notification message is initially transmitted to the terminal, the MMS notification message includes buffer data and information about the data flow, the buffer data being initial streaming video data that can be stored on the terminal prior to a user of the terminal starting a streaming service such that the streaming client can start streaming of buffer data without delay.

Applicants submit that Mostafa, Richardson, Jason, and Barde fail to disclose or suggest at least these features of amended Claim 12.

Mostafa is directed to a communication service in which an MMS notification is sent to a receiving terminal prior to a terminal downloading media from a media server. Fig. 2 of Mostafa shows a system 20 which includes a communication server which includes a media server 22 and a MMS server 23. Mostafa describes a three phase process of streaming information to the receiving terminal. During phase 1, a sender 21 establishes a streaming session with media server 22 and uploads media content to the server (see para. [0103]). During phase 2, a notification is sent via the MMS server 23 to receiver 24 which indicates that the media content is stored on media server 22 (see para. [0104]). During phase 3, the receiver 24 establishes a streaming session with media server 22 based on information in the notification message and the receiver starts to download and play the media (see para. [0105]).

The Office Action acknowledges that while Mostafa discloses an MMS notification message, it does not specifically disclose buffer data, the buffer data being initial streaming video data that can be stored on the terminal prior to a user of the terminal starting a streaming service. (See Office Action, at page 4). The Office Action relies on Barde to remedy this deficiency of Mostafa (see Office Action, at page 6).

Fig. 1 of Barde shows a network 100 with various client devices and server devices attached thereto. Fig. 2 shows that a client device has a streaming media player 200 with a buffer 206 and a "stitched-reference play-list" 208. The streaming media player is configured to buffer and play back streaming media content in accordance with the stitched reference play-list 208 (see para. [0033]). Figs. 3-5 of Barde describe a prior art technique of downloading streaming media, in which a user selects a video to download via an interface shown on Fig. 3, and Fig. 5 shows that the media player will buffer data for about 5 seconds

with a blank screen to show to the user. Then, after the buffering, the initial video content itself may just show a still image (such as an FBI warning) for several seconds before the remainder of the video is played (see Fig. 5). Figs. 6-8 show an embodiment of the invention described by Barde. Fig. 6 shows that when a user selects a video to be streamed, a still image (such as an FBI warning) is displayed almost immediately without the initial blank screen being shown while the video content is initially being buffered (see also Fig. 7).

Applicants note that Barde does not divide the actual streaming data into different categories, but uses two types of data: still images and streaming data. Applicants note that Barde does not actually increase the speed of downloading streaming content, but only shows still images during a buffering period to improve a viewing experience because the conventional art only showed a blank screen during the download time. Also, Barde only describes using one channel to distribute the streaming information and still images.

The Office Action had taken the position that it would have been obvious to include the initially buffered data of Barde's system in the MMS notification message of Mostafa's system for the advantage of implementing a quick starting video process within Mostafa's system. (See Office Action, at page 6).

However, Applicants respectfully submit that there is no teaching in the references to make this combination without using hindsight analysis based on the Applicants' disclosure. The MMS notification message of Mostafa is a message for notifying the availability of a streaming content. However, in Barde there is no description or suggestion to include streaming video data in any type of message which may be the equivalent of a MMS notification message which notifies the availability of a streaming content to a user. On the contrary, as described above, Barde describes a user first starting to stream the video data by selecting a video to be played, and then receiving a still image to be displayed while video data is initially buffered. Thus, the user in Barde may be notified of the availability of a

video by a playlist or an interface shown in Figs. 3 or 11. However, Barde clearly describes that all buffering of data begins ***after*** the user actually selects the video for download, and thus after any notification of the availability of a video to a user has already been made, and after a user has started a streaming service (see for example, the time line of Fig. 7).

Therefore, Applicants submit that combining Mostafa's MMS notification with Barde's buffering method would actually achieve a system where: 1) a MMS message is sent to a receiver, including information about the streaming content, and the information could be information of a ASX metafile, or a playlist according to Barde (see para. [0040]); 2) the streaming data as a whole is downloaded to a buffer from a server after a user selection, including both the still images and the streaming content; and 3) the receiver sees the still image while waiting for the buffer to fill for a streaming content to be shown.

Furthermore, MPEP §2142 states:

> The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR International Co. v. Teleflex Inc., 550 U.S. 82 USPQ2d 1385, 1396 (2007) noted that **the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit**. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, **there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness**." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). (Emphasis added).

As stated in MPEP 2145.X.A:

> However, "[a]ny judgement on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made ***and does not include knowledge gleaned only from applicant's disclosure***, such a reconstruction is proper." In re McLaughlin 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971). (Emphasis added).

Thus, Applicants submit that the Office Action has not articulated why a person of ordinary skill in the art would take initially buffered data from Barde and insert it into the MMS notification message of Mostafa based on what was known at the time of the Applicants' invention. Therefore, it appears that the Office Action is using improper hindsight analysis based on the Applicant's disclosure to achieve the asserted combination of Barde and Mostafa. Therefore, Applicants submit that the rejection of Claim 12 under 35 U.S.C. §103(a) is improper and must be withdrawn.

Applicants note that during the interview, the examiner and her supervisor explained that the transmission of the initially buffered data in Barde may itself constitute a message notifying the availability of streaming content to a user and thus provides the rationale for inserting the initially buffered data of Barde into the MMS notification message of Mostafa. Applicants respectfully disagree. There is no teaching or suggestion in Barde that the transmission of buffered data itself rationally constitutes the equivalent of the MMS notification message of Mostafa. As discussed above, the user in Barde is already notified of the availability of the streaming data, via an interface, before any buffered data is sent to the user. The examiner and her supervisor also suggested that a user seeing the still image of Barde, which is displayed to a user while the video data is buffering, constitutes a notification of availability of streaming video data. However, even if a user in Barde is aware that the still image being displayed indicates that streaming video data is being buffered, this would only be a notification that streaming video data ***is being received*** at the terminal, which is still not similar to the MMS notification message of Mostafa.

In other words, one of ordinary skill in the art may learn from Barde to provide an implicit notification (such as the displayed still image) that streaming video data is currently being received and buffered at a receiving terminal. Therefore, one of ordinary skill in the art may attempt to modify Mostafa based on this teaching in Barde to provide such an

implicit notification ***separate from*** the MMS notification message because the MMS notification message in Mostafa is sent before any streaming video data is currently being received and buffered at a receiving terminal. However, there is still no teaching or suggestion in Barde to provide initially buffered data in the actual MMS notification message of Mostafa. Therefore, Applicants submit that it must be hindsight analysis based on the Applicants' disclosure which is being relied upon to remedy this deficiency of the prior art with respect to Claim 12.

Therefore, Applicants respectfully submit that the combination of Mostafa and Barde fails to disclose or suggest "before a streaming service is initialized, an MMS message is initially transmitted to the terminal, the MMS message includes buffer data and information about the data flow, the buffer data being initial streaming video data that can be stored on the terminal prior to a user of the terminal starting the streaming service such that the streaming client can start streaming of buffer data without delay," as defined by Claim 12.

Richardson, Jason, and Cooper has also been considered but fail to remedy the deficiencies of Mostafa and Barde with regard to Claim 12.

Therefore, Applicants respectfully submit that Claim 12 (and all associated dependent claims) patentably distinguishes over Mostafa, Richardson, Jason, Barde, and Cooper, either alone or in proper combination.

Independent Claims 20-22 recite features similar to those of Claim 12 discussed above. Therefore, Applicants respectfully submit that Claims 20-22 (and all associated dependent claims) patentably distinguish over Mostafa, Richardson, Jason, Barde, and Cooper, either alone or in proper combination.

With respect to new Claim 23, new Claim 23 recites, *inter alia*,

> the MMS notification message being sent to the terminal prior to the user of the terminal requesting to start a streaming session for receiving the video data.

Applicants submit that new Claim 23, which is similar to proposed clarifying claim amendments discussed during the interview, patentably distinguishes over Mostafa, Richardson, Jason, Barde, and Cooper, either alone or in proper combination for at least the reasons discussed above with regard to Claim 1. Furthermore, Barde describes buffered data being sent to a user after a user selects a video to download. Thus, Barde clearly describes that such initially buffered data is sent after the user requests to start a streaming session. Therefore, one of ordinary skill in the art would not combine the teachings of Barde and Mostafa to achieve "the MMS notification message includes buffer data and information about the data flow, the buffer data being initial streaming video data...," as defined by independent Claim 12, and "***the MMS notification message being sent to the terminal prior to the user of the terminal requesting to start a streaming session for receiving the video data***," as defined by Claim 23.

Therefore, Applicants submit that new dependent Claim 23 patentably distinguishes over Mostafa, Richardson, Jason, Barde, and Cooper, either alone or in proper combination, for at least the foregoing reasons.

Consequently, in light of the above discussion and in view of the present amendment, the outstanding grounds for rejection are believed to have been overcome. The present application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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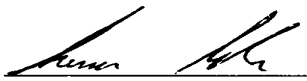

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